

MEMORANDUM FOR THE STAFF DIRECTOR

THROUGH: DAVID MUSSATT, RPCU CHIEF

FROM: MINNESOTA ADVISORY COMMITTEE

SUBJECT: MINNESOTA ADVISORY COMMITTEE PROJECT PROPOSAL

Attached for your review and approval is a Minnesota Advisory Committee project proposal on *Civil Rights and Police Practices in Minnesota*. The Minnesota Advisory Committee approved this proposal at a meeting of the Committee on October 31, 2016 by a vote of [] yes and [] no.

Attachments: Project Proposal
Project Proposal Checklist

This project proposal is:

_____ Approved

_____ Disapproved

_____ Returned for revisions according to comments.

Staff Director

Date

A project proposal of the Minnesota Advisory Committee to the United States Commission on Civil Rights

Topic: Civil Rights and Police Practices in Minnesota

Jurisdiction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

The Minnesota State Advisory Committee intends to examine civil rights and police practices in the State of Minnesota. Specifically, the Committee would like to focus its study on the implementation of The President's Task Force on 21st Century Policing¹ recommendations in Minnesota as it relates to policing disparities in communities of color.

The U.S. Constitution along with other federal law protects citizens from law enforcement discrimination and misconduct in the administration of justice, including:

- The Fourth Amendment² to the U.S. Constitution protects personal privacy and citizens' rights to be free from "unreasonable searches and seizures."
- The Fifth Amendment³ and the Fourteenth Amendment⁴ to the U.S. Constitution mandate that no one shall be "deprived of life, liberty or property without due process of the law." Additionally, the Equal Protection Clause of the Fourteenth Amendment ensures that no state shall deny any persons "the equal protection of the laws."

¹ U.S. Department of Justice, Office of Community Oriented Policing Services, *Final Report of the President's Task Force on 21st Century Policing.*, 2015. (hereafter cited as *President's Task Force on 21st Century Policing*).

² U.S. Const. amend. IV

³ U.S. Const. amend. V

⁴ U.S. Const. amend. XIV

- The Eighth Amendment⁵ to the U.S. Constitution forbids “cruel and unusual punishment.”
- Section 1983 of Title 42 of the United States Code⁶ makes money damages available to those whose constitutional rights have been violated by a person acting under state authority.
- The Civil Rights Act of 1964⁷ prohibits discrimination based on race, color, religion, sex, or national origin.
- Section 242 of Title 18 of United States Code⁸ makes it a crime for a person under the “color of the law” to willfully deprive a person of a right or privilege protected by the constitution or laws of the United States.

The Minnesota Advisory Committee proposes to study the extent to which these protections, as applied in practice, are sufficient to address current concerns regarding disparate policing practices in communities of color.

Background

In 1981, the Commission issued a seminal report on police practices in America, *Who is Guarding the Guardians?* Twenty years later the Commission issued a follow-up report, *Revisiting Who is Guarding the Guardians?* Both reports raised troubling concerns about insular police practices that undermine equal protection under the law. In 2001, The Minnesota State Advisory Committee released its own report investigating the status of equal opportunity for communities of color in Minnesota, specifically looking at (1) income and employment, (2) education, (3) public safety, and (4) housing and public accommodation. The Commission’s findings about public safety raised concerns and reported recommendations about the importance of programming and policing strategies to improve community relations with police.⁹

⁵ U.S. Const. amend. VIII

⁶ 42 U.S.C. § 42, Sec 1983 (1861)

⁷ Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964)

⁸ 18 U.S.C. § 242 (1994)

⁹ U.S. Commission on Civil Rights, Minnesota Advisory Committee, *The Status of Equal Opportunity for Minorities in Moorhead, Minnesota*, 2001.

Recent police shootings and concerns regarding excessive use of force have garnered national attention to patterns of disparate policing practices in marginalized communities. In hopes of improving police practices and strengthening relationships between law enforcement officers and the communities they serve, on December 14, 2014 President Barack Obama signed an executive order creating The Task Force on 21st Century Policing. The Task Force received testimony and recommendations from a wide range of stakeholders offering insights into strategies to cultivate community trust while pursuing more effective crime reduction tactics. By May of 2015, the President’s Task Force on 21st Century Policing identified 6 “pillars” that would foster better police and community relations:¹⁰

1. Building Trust and Legitimacy;
2. Policy and Oversight;
3. Technology and Social Media;
4. Community Policing and Crime Reduction;
5. Officer Training and Education; and
6. Officer Safety and Wellness.

In May 2016, the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) launched the Advancing 21st Century Policing Initiative,¹¹ which provides assessment and technical assistance to law enforcement agencies working towards implementing 21st Century Policing recommendations. One of the participating sites is the Hennepin County Sheriff’s Department in Minnesota. Hennepin County has been at the forefront of the national conversation regarding police practices. In 1993, the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System¹² found that in Hennepin County, people of color were arrested and charged at vastly disproportionate rates. In 2003, The Council on Crime and

¹⁰ President’s Task Force on 21st Century Policing

¹¹ U.S. Department of Justice, Office of Community Oriented Policing Services, *The President's Task Force on 21st Century Policing: One-Year Progress Report*, 2016.

¹² State of Minnesota, Supreme Court Task Force, *Force on Racial Bias in the Judicial System*, 1993.

Justice¹³ found that throughout Minnesota; Black, Latino, and American Indian drivers were stopped as well as searched at greater rates than White drivers. Black and Latino drivers were stopped and searched at especially high rates in suburban cities. While White drivers were searched at lower rates than drivers of color, law enforcement officers found contraband in searches of White drivers at a greater rate than drivers of color. In 2015 and 2016, Hennepin County was in headlines for two major police killings: Jamar Clark and Philando Castile.

On Sunday, November 15, 2015, Jamar Clark was fatally wounded after an altercation with two Minneapolis police officers, Mark Ringgenberg and Dustin Schwarze. The circumstances of Clark's death are highly disputed. Officers claim that Clark was trying to grab an officer's gun when he was shot¹⁴, while witnesses say Clark was handcuffed when police shot him.¹⁵ Following the shooting, both officers were placed on paid administrative leave. Since the incident, activists have demanded that the police release the video of the shooting. No police dashcam or bodycam videos of the incident have been released as of the writing of this proposal. Protests followed Clark's death and 51 demonstrators were arrested.¹⁶ On June 1, 2016, Federal officials and Hennepin County prosecutors declined to press criminal charges against officers because of insufficient evidence to support criminal civil rights charges against the Minneapolis Police Department.¹⁷

Following Clark's death, another Black male, Philando Castile, was fatally shot by Officer Jeronimo Yanez during a traffic stop on July 6, 2016. According to reports, Officer Yanez and his partner Joseph Kauser pulled Castile over for his alleged resemblance to a robbery suspect. The circumstances of this case are also disputed. Diamond Reynolds, Castile's girlfriend was in the car during the traffic stop. She reported that the officer asked for Castile's license and

¹³ Institute on Race and Poverty and Council on Crime and Justice, *Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions*, Report to the Minnesota Legislature., 2003.
<http://static.prisonpolicy.org/scans/ccj/Racial%20Profiling%20Study.pdf>

¹⁴ Tim Nelson, "Conflicting Accounts: What Happened the Night Jamar Clark Was Shot," *Minnesota Public Radio News*, 2015, <http://www.mprnews.org/story/2015/12/04/jamarclark-shooting-what-happened> (last accessed Oct.. 10, 2016).

¹⁵ MPR News Staff, "Police Union Chief: Jamar Clark Wasn't Cuffed, Went For Officer's Gun," *Minnesota Public Radio News*, 2015, <http://www.mprnews.org/story/2015/11/18/bca-names-officers> (Last accessed Oct.10, 2016).

¹⁶ David A Graham, "How Did Jamar Clark Die," *The Atlantic*, 2015, <http://www.theatlantic.com/politics/archive/2015/11/jamar-clark-is-the-next-great-police-brutality-controversy/416418/> (last accessed, Oct. 10, 2016).

¹⁷ U.S. Department of Justice, Office of Public Affairs, *Federal Officials Decline Prosecution in the Death of Jamar Clark*, 2016.

registration. As Castile reached for these documents he informed officers that he was carrying a registered firearm. According to Reynolds, Yanez told Castile not to move and while Castile tried to put his hands in the air, Officer Yanez shot him four times.¹⁸ Following the shooting, Governor Mark Dayton suggested that racial bias contributed to Castile's death.¹⁹ A Minneapolis attorney rejected arguments that Castile's race contributed to the shooting, commenting that Officer Yanez simply reacted to the presence of Castile's gun²⁰. Governor Dayton has called for the U.S. Department of Justice to independently monitor the Minnesota Bureau of Criminal Apprehension's investigation.²¹ Castile's death resulted in a series of statewide and nationwide protests, both peaceful and violent.²² At one such protest, violence broke out between demonstrators and police; 102 people were arrested and 21 officers were injured.²³

Along with police shootings, general police misconduct has been widely reported throughout Minnesota. In 2010, there was a class-action lawsuit against the Metro Gang Strike Force. This was a multi-jurisdictional police task force commissioned to fight drug trade and violent crime throughout the state. An investigation revealed that since its inception in 1997, officers were improperly seizing money and property, and often brutalizing innocent victims, many of whom were people of color. The lawsuit resulted in a \$3 million settlement; nearly \$1.5 million was

¹⁸ Camila Domonoske and Bill Chappell, "Minnesota Gov. Calls Traffic Stop Shooting 'Absolutely Appalling At All Levels,'" *National Public Radio*, July 7, 2016, <http://www.npr.org/sections/thetwo-way/2016/07/07/485066807/police-stop-ends-in-black-mans-death-aftermath-is-livestreamed-online-video> (last accessed Oct. 10, 2016).

¹⁹ T. Rees Shapiro et al., "Police group: Minn. governor 'exploited what was already a horrible and tragic situation,'" *The Washington Post*, July 9, 2016, <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/07/minn-cop-fatally-shoots-man-during-traffic-stop-aftermath-broadcast-on-facebook/> (last accessed Oct 10, 2016).

²⁰ Bryan Alexander, "Lawyer: Officer who shot Philando Castile reacted to gun, not race," *USA Today*, July 9, 2016, <http://www.usatoday.com/story/news/nation/2016/07/09/lawyer-minnesota-cop-reacted-gun-not-race/86894752/> (last accessed Oct. 10, 2016).

²¹ T. Rees Shapiro et al., "Police group: Minn. governor 'exploited what was already a horrible and tragic situation,'" *The Washington Post*, July 9, 2016, <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/07/minn-cop-fatally-shoots-man-during-traffic-stop-aftermath-broadcast-on-facebook/> (last accessed Oct 10, 2016).

²² Mitch Smith, Christina Capecchi and Matt Furber, "Peaceful Protests Follow Minnesota Governor's Call for Calm," *New York Times*, July 8, 2016, http://www.nytimes.com/2016/07/09/us/philando-castile-jeronimo-yanez.html?_r=0 (last accessed Oct. 10, 2016).

²³ Mara Gottfried et al., "After weekend violence, Philando Castile's family calls for calm," *Twin Cities: Pioneer Press*, July 9, 2016, <http://www.twincities.com/2016/07/09/amid-racial-strife-hundreds-seek-answers-in-protests-church-service/> (last accessed Oct. 10, 2016).

allocated to racial sensitivity training for officers, which six years later has yet to be implemented.²⁴

Between 2006 and 2012 in Minneapolis alone, the city paid out \$14 million for alleged police misconduct; though very few of these cases resulted in disciplinary action for officers.²⁵ In 2012 the Office of Police Conduct Review (OPCR) replaced the Civilian Review Authority (CRA) with the hopes of improving the transparency of investigations.²⁶ According to reports, members of CRA felt their effectiveness was limited because police leadership ignored their rulings and recommendations.²⁷ The OPCR now sends complaints to be evaluated by a civilian unit and a police unit. Proponents of this change believe incorporating law enforcement will improve collaboration and effectiveness, while critics argue that victims of police misconduct will be required to complain directly to the police.²⁸ Of the first 439 cases brought against officers to the OPCR, not a single case ended in disciplinary action for accused officers.²⁹ A majority of the complainants were from African American civilians.³⁰ In attempts to address police transparency and accountability, the OPCR with the City of Minneapolis launched an open portal on October 11, 2016, allowing anyone to look up public data on police conduct cases.³¹

Recent events in Minnesota and nationwide have raised fundamental questions about the prevalence of police misconduct, specifically in communities of color. The Committee seeks to

²⁴ State of Minnesota, Department of Public Safety, *Report of the Metro Gang Strike Force Review Panel*. 2009.

²⁵ Alejandra Matos and Randy Furst, “Minneapolis cops rarely disciplined in big-payout cases,” *Star Tribune*, June 3, 2013, <http://www.startribune.com/minneapolis-cops-rarely-disciplined-in-big-payout-cases/209811991/> (last accessed Oct. 10, 2016).

²⁶ Brant Williams, “Minneapolis City Council shines light on police Civilian Review Authority,” *MPR News*, July 25, 2012, <http://www.mprnews.org/story/2012/07/25/law/minneapolis-police-civilian-review-authority> (last accessed Oct 10, 2016). (hereafter cited as Williams, “*Minneapolis City Council shines light on police Civilian Review Authority*”)

²⁷ Matt McKinney, “New Minneapolis cop review panel under fire,” *Star Tribune*, Oct. 10, 2013 <http://www.startribune.com/new-minneapolis-cop-review-panel-under-fire/227153271/> (last accessed October 10, 2016).

²⁸ Williams, “Minneapolis City Council shines light on police Civilian Review Authority”

²⁹ Randy Furst. “No Minneapolis cops have been disciplined after 439 complaints,” *Star Tribune*, August 28, 2013, <http://www.startribune.com/no-minneapolis-cops-have-been-disciplined-after-439-complaints/221422101/> (last accessed Oct 10, 2016).

³⁰ City of Minneapolis, Department of Civil Rights, Office of Police Conduct Review, *Reports: Demographics*, <http://www.minneapolismn.gov/civilrights/police-review/archive/index.htm>.

³¹ Associated Press, “Online portal allows public access to Minneapolis police conduct data,” *Twin Cities: Pioneer Press*, Oct. 13, 2016, <http://www.twincities.com/2016/10/13/online-portal-allows-public-access-to-minneapolis-police-conduct-data/> (last accessed Oct 17, 2016).

examine disparate policing practices in Minnesota which may include investigating one or more of the following:

- What is the state of police and community relations in Minnesota, especially in communities of color? Does this differ significantly from police relations in white communities?
- What are current policing practices in Minnesota, and how do they differ or align with The President's Task Force on 21st Century Policing recommendations?
- To what extent are The President's Task Force on 21st Century Policing recommendations being implemented in Minnesota? Specifically, to what extent are implicit bias training, procedural justice training, data collection, and transparency being implemented?
- What impact do these recommendations have on disparate policing practices?
- What barriers are preventing the implementation of these recommendations?
- To what extent do these recommendations, when/if implemented, substantially improve disparities in policing practices in Minnesota? To what extent might they substantially improve police and community relations?
- What other factors may be contributing to policing disparities and impacting community/police relations in communities of color in Minnesota?

The Committee seeks to address such concerns as they have been highlighted by recent events in the areas surrounding Minneapolis and St. Paul, but may also be prevalent throughout the State of Minnesota. Therefore, the Committee's study may include a review of policing practices in metropolitan, suburban, and rural communities; particularly where significant Black, Latino, Native American, immigrant, and Muslim populations reside.

Scope

The scope of this project is limited to an examination of police practices in the State of Minnesota. Specifically, the Committee intends to focus its study on The Final Report of The

President's Task Force on 21st Century Policing, and its implementation in Minnesota as it relates to policing disparities in communities of color. City, State, and County law enforcement will be included in this inquiry.

The Committee will examine the value of and adherence to each of The President's Task Force on 21st Century Policing recommendations, but will focus specifically on Minnesota law enforcement implementation of recommendations related to (1) implicit bias training; (2) procedural justice training; (3) data collection; and (4) transparency. The Committee will also examine current state and federal legislation related to discrimination on the basis of race or color in the administration of justice to establish recommendations for potential responses to any disparities identified in the examination.

Methodology

This project will include a gathering of data, documents, and opinions to enable the Minnesota Advisory Committee to reach factual determinations. In this project, the Committee will gather direct testimonial evidence from experts and citizens as well as documentary evidence from such individuals. The Committee proposes to hold one or more public meeting(s). During these public meetings, the Committee will solicit testimony and comments from law enforcement, government officials, community members, and experts on police practices in communities of color in the State of Minnesota. This/these meeting(s) may take place in person or via web-conference. The purpose of the meeting(s) is to hear information directly from Minnesota residents—particularly those who may be/may have been impacted by police misconduct—as well as law enforcement agents, government officials, scholars, and other experts. The public meeting(s) will be advertised and recorded by a court reporter. The meeting(s) will include time for public comment in which any Minnesota resident who wishes to share may do so. The Committee will also accept written statements submitted by residents who are unable to attend the public meeting(s) in person.

The Committee also proposes to gather factual information related to police practices in Minnesota, and implementation of the President's Task Force on 21st Century Policing recommendations. To ensure balance, all members of the bipartisan Committee will participate in drafting the agenda and identifying speakers for the public meeting(s) at which the Committee

will hear testimony from Minnesota residents as well as scholars, police departments, and other experts.

Anticipated Outcomes

An anticipated outcome of the project is that the U.S. Commission on Civil Rights is advised of disparities in the administration of justice on the basis of race or color, and specifically whether the implementation of The President's Task Force on 21st Century Policing recommendations impact policing in communities of color in Minnesota. The Committee proposes to do so by issuing a report to the Commission with its findings and recommendations. The Committee looks forward to hearing from concerned Minnesota citizens and working with organizations and other agencies to explore not only what happens in Hennepin County, but what is happening throughout Minnesota. The Committee also hopes to make recommendations that will improve policing practices in the future.

Time Frames

| | |
|---|---------------|
| Committee and OSD approval of proposal | October 2016 |
| Public Meeting in Minnesota | February 2017 |
| Completion of research and closing of the official record | March 2017 |
| Draft Report submitted by legal review and editing | June 2017 |
| Approval of report by full committee and public release | July 2017 |

Anticipated Costs

| | |
|------------------------|----|
| Staff Travel | \$ |
| Public hearing | \$ |
| Meeting room | \$ |
| Transcription services | \$ |
| SAC travel to hearing | \$ |
| TOTAL | \$ |

SAC PROJECT PROPOSAL CHECKLIST

State: Minnesota

Project Name: Civil Rights and Police Practices in Minnesota

Section I. Approval of Proposal by SAC

1. Was the report voted on by the SAC by mail, meeting, or a combination? _____
2. If the vote was taken by mail:
What was the date the proposal was mailed:
What was the response due date:
Were follow-up calls made to the non-respondents?
List those who failed to respond:
List any special circumstances that apply to any of the non-respondents:
3. If the vote was taken during a meeting:
Was the proposal mailed to members before the meeting: _____ Yes _____ No
When was the proposal sent? What was the date of the meeting?
Did the SAC review and approve the project proposal (not just the topic)? _____ Yes _____ No
4. What was the vote on the project proposal?

Section II. Approval of Proposal by the Office of the Staff Director (to be completed by OSD)

1. Does the proposal identify actions (by staff and the SAC) that should result in balanced research and testimony? _____ Yes _____ No
2. Does the proposal identify sources to be used to research the topic and do they represent a variety of opinions on the issue? _____ Yes _____ No
3. Are milestones and estimated dates provided? _____ Yes _____ No
4. Is the schedule reasonable given other commitments to the scope of the project? _____ Yes _____ No
5. Is the project within the Commission's jurisdiction? _____ Yes _____ No
6. Is the project budget reasonable given its scope and the availability of funds? _____ Yes _____ No